

11.12.00.00 - LEASING STATE-OWNED PROPERTY

11.12.01.00 General

The following types of properties shall normally be leased:

- Commercial
- Industrial
- Agricultural
- Income residential where the state is seeking a master tenant.

11.12.02.00 State Lease Forms

The state's standard lease is RW 11-2, which should be used for leasing all commercial and industrial properties and modified for income residential properties where the state is seeking a master tenant. Agricultural property is controlled by the state's agricultural lease, RW 11-3.

11.12.03.00 Lease Rates

With few exceptions lease rates shall be based on comparable market rates.

11.12.04.00 Lease Preparation

The district shall prepare the lease in quadruplicate, forward the original and two copies to the lessee for signature, and retain the fourth copy.

11.12.05.00 Lease Approval by Lessee

The lease shall be approved by the individual(s) or, if appropriate, the authorized officer(s) of the company or corporation. The lessee's title or capacity to approve the lease shall appear beneath lessee's signature. If the lessee is a corporation that has a seal, the seal may be affixed to the lease near the signature(s) of the corporate officer(s) approving the lease.

All lessees shall receive the same level of service without regard to race, color, national origin or sex in compliance with Title VI of the 1964 Civil Rights Act (42 USC 2000d, et seq.).

The Agent will deliver a Title VI Survey (RW 2-1) to all lessees, except former owners and inherited

tenants, at the time the lease agreement is executed. The Agent will advise the tenants that furnishing this information is voluntary and the information will be used for statistical purposes and reviewed for compliance with federal requirements. Compliance with this requirement is noted in the rental file, and the Title VI Survey is sent to P&M.

11.12.06.00 Lease Approval by State

The DD or authorized delegate is authorized to execute all residential and nonresidential rental agreements and non-airspace leases. Legal must approve rental agreements and leases on nonstandard forms prior to execution on the department's behalf.

11.12.07.00 Lease Renewals

RWPS Report "Lease Expiration Notice" will alert Property Management of leases that are due to expire. Upon receiving the report, the Agent shall:

- Review and inspect the property.
- Determine if the current lease rate is still the market rate.
- Check to see if the present tenant is interested in renewing the lease.

If the lessee does not want to renew the lease, the lead time will give Property Management an opportunity to re-rent the property with minimal loss of rental income.

If the lessee wants to continue leasing, the lease may be renewed or modified using RW 11-19. Lessee's signature on the renewal shall be identical to the signature format on the original lease, and the state shall execute in the same manner as a new lease.

11.12.08.00 Assignment of Lease

Circumstances may occur when a lessee wishes to sell their business and the state finds it beneficial to permit assignment of the lease. The state has the option to refuse or accept the proposed assignee as a responsible party who is able to fulfill the lease obligations for the balance of the lease period. The district shall require the proposed assignee to

complete a rental application and shall investigate thoroughly to determine if the proposed assignee is acceptable.

If the proposed assignee is acceptable, the lessee shall sign the "Assignment of Lease" section of RW 11-20 as assignee. The state shall execute "Consent to Assignment of Lease" section of the form in the same manner as the original lease, and shall process the "Assignment of Lease" in the same manner as the original lease.

11.12.09.00 **Public Notice to Bidders**

It may be advantageous for the district to use the public bidding process to accomplish leasing of certain types of property. The suggested format presented in Exhibit 11-EX-14 may be modified to fit any type of property being offered for lease.

11.12.10.00 **Construction of Improvements by Lessee**

The district may consider leasing future right of way for development of improvements where such development will not result in a relocation assistance problem or obligation to the state but will result in a net profit to the state or other public benefit.

Such leases should include many of the clauses contained in a standard airspace development lease. (Refer to Airspace Chapter 15.) In particular, clauses for condemnation, insurance requirements, design and location controls, and rental rate adjustments based on the Consumer Price Index should be considered for inclusion in development leases. Such leases should also include a termination clause and a performance bond or other provision to ensure timely removal of improvements at no expense to the state.

The district shall submit all such leases involving construction of aboveground structures to the DD or authorized delegate for **prior** approval.

11.12.11.00 **Leasing Excess Land**

Property Management shall obtain approval from the Excess Land Section before any excess land is committed to a lease. This is important because a lease affecting excess land may or may not be complimentary to the sale of the parcel. When excess land is leased, Property Management should forward a copy of the lease to the Excess Land Section for its files.

11.12.12.00 **Leasing to Highway Contractor**

Where excess vacant or improved parcels are available in the vicinity of a highway project, the district may enter into a lease with the highway contractor during the period of the project. The lease should be on standard lease RW 11-2, which usually covers uses such as construction yards and haul roads. The lease rate will be the fair market rent as in other state leases. Absolutely no advance commitment shall be made to any bidding highway contractor, as this would tend to give that contractor an advantage over other contractors competing for the project.

To avoid violations of any necessary access control lines and to ensure safe access to and from leased property, the lease must contain provisions specifying exactly where the contractor may gain access to and from the leased property and where the contractor may **NOT** gain access to and from the leased property. Before finalizing the lease, District Right of Way will obtain the District Permit Engineer's approval of the lease.

11.12.13.00 **Interim Leasing to a City or County Under S&H Code 104.7**

S&H Code Section 104.7 requires the department, upon request by a city or county, to provide information and to lease property to a city or county under specified conditions. The property must be:

- Unoccupied and unimproved.
- Held for future highway purposes (does not include rescinded routes or excess land held for study).
- Located within the boundaries of the city or county that enters into the lease.

Property determined by the department to have commercial, industrial, or residential use as the most feasible or best use is not eligible for this program.

11.12.13.01 **Priority of Use**

The first priority is for agricultural and community garden purposes; the second priority is for recreational purposes.

11.12.13.02 **Lease Terms**

The lease rate shall be \$1.00 per year, the term shall not be less than one year, and the lease shall be renewable. Notice of cancellation shall not exceed 90 days without the DD's or authorized delegate's approval.

11.12.13.03 **Subleasing**

A city or county may sublease the property for agricultural, community garden, or recreational purposes subject to the following constraints:

- The city or county must notify the department in writing.
- The city or county may proceed with the sublease unless disapproved by the department within 10 days after the notice is sent to the department.
- The city or county shall give first priority for a sublease to a contiguous property owner.
- The city or county may charge rental fees at least sufficient to pay its administrative costs.
- The city or county shall transmit all money received under a sublease, less administrative costs, to the department for deposit to the State Highway Account.

11.12.13.04 **Lease Form**

The lease form is shown in Exhibit 11-EX-15.

11.12.14.00 **Lease Recordation**

Under most circumstances, a lease where the state is lessor shall not be recorded. Recordation would serve to cloud title of the property and could require a quitclaim deed to clear title at a later date.

11.12.15.00 **Lease Cancellation**

All state leases shall contain provisions that the state shall have the right to cancel the lease upon giving specific notice without other qualifications or reasons.

11.12.15.01 **Mutual Consent**

Occasions may arise when it is to the mutual benefit of the state and lessee to cancel a lease that is in force. This shall be accomplished by using

RW 11-21, "Cancellation of Lease." The lease cancellation shall be signed by both parties and shall be processed in the same manner as the lease.

11.12.15.02 **Lessee's Failure to Pay Rent**

When the lessee is delinquent in rental payments, a "3-day Notice to Pay Rent or Quit," RW 11-11, shall be used by the state as lessor. Such notice shall be served upon the lessee in the manner specified in Section 11.08.04.00.

Procedures set forth in Chapter 10, Relocation Assistance, apply when canceling tenancy of a lessee who is eligible for relocation payments.

Money that the lessee has on deposit with the state may be retained and applied toward the delinquency that exists. The deposit shall not be credited toward the delinquency, however, until after the lessee has vacated the property, leaving it in a satisfactory condition acceptable to the state.

11.12.15.03 **Based on Right of Termination**

The standard lease provides for cancellation and termination of the lease by either party. When the lessee is not delinquent in rent and the state wishes to cancel the lease, a "Notice of Termination of Tenancy and Notice to Quit," RW 11-14, shall be used.

11.12.16.00 **Materials Agreement for Removal of Materials**

Occasionally the state may find it desirable to have materials removed from state property for use as fill on a state highway project. When materials can be removed without decreasing the property value more than the estimated value of the material to be obtained, the district may enter into a Materials Agreement with a contractor.

The material removed shall not create a hazard or an eyesore in the area. The finished elevations after removal of material shall blend with the adjoining property. To ensure desirable results are achieved, the District Environmental Branch must be contacted for advice and recommendation before a Materials Agreement is negotiated.

No Materials Agreement shall be made or proposed with any contractor until after award of

the highway construction contract. An alternative would be to indicate in the contract specifications that a specified amount of material is available at a certain location so all prospective bidders have knowledge of it.

See Exhibits 11-EX-16 and 11-EX-17 for sample formats for Materials Agreements.

11.12.17.00 **Available Office Space**

Right of Way should notify the District Facilities Manager when office space is available for lease. The District Facilities Manager will notify DGS, through the Departmental Facilities Manager in the Administrative Service Center, that office space is available. If DGS has other state tenants who might be interested in the space, they will notify the department. It is not necessary to hold the property off the market for DGS during the notification period.